IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

MERCEDES CAPENER,

Plaintiff,

v.

JANET NAPOLITANO, Secretary of Department of Homeland Security, et al. Defendants.

MEMORANDUM DECISION and ORDER ADOPTING REPORT AND RECOMMENDATIONS

Case No. 2:11-CV-601-DN-DBP

District Judge David Nuffer

This case was referred to Magistrate Judge Dustin Pead under 28 U.S.C. § 636(b)(1)(B). After extensive briefing on the issues raised, Judge Pead issued the Report & Recommendations (R & R) recommending that this court: (1) FIND it has subject matter jurisdiction over Plaintiff's amended complaint; (2) AFFIRM Defendants' decision to deny Plaintiff's adjustment Application because Defendants did not violate 5 U.S.C. § 706(2)(A); and (3) DENY Plaintiff's request for injunctive relief. 4

The parties were notified of their right to file objections within 14 days of being served with a copy of the R & R.⁵ No objections to the R & R were filed or received by the court.

¹ Order Referring Case, docket no. 28, filed September 10, 2012.

² Defendants' Brief in Response to Plaintiff's Amended Complaint, <u>docket no. 26</u>, filed August 17, 2012; Plaintiff's Reply to Defendants' Response, <u>docket no. 27</u>, filed September 6, 2012; Defendants' Response to Plaintiff's Reply, <u>docket no. 29</u>, filed September 20, 2012; Request for Supplemental Briefing, <u>docket no. 31</u>, filed November 21, 2012; Clarification re Request for Supplemental Briefing, docket no. 32, filed November 22, 2012; Defendants' Supplemental Brief, <u>docket no. 34</u>, filed December 21, 2012; Plaintiff's Supplemental Briefing, <u>docket no. 35</u>, filed December 21, 2012; Order Requesting Plaintiff Provide Supplemental Briefing on Jurisdictional Issue, docket no. 37, filed April 25, 2013; Plaintiff's Second Supplemental Briefing, <u>docket no. 38</u>, filed May 10, 2013.

³ Report and Recommendations, <u>docket no. 39</u>, filed October 16, 2013.

⁴ *Id.* at 14.

⁵ *Id*.

The court has conducted a review of the issues and finding no clear error, ⁶ agrees with Judge Pead's thorough analysis, conclusions and recommendations. Accordingly, the R & R is adopted as the order of this court.

ORDER

IT IS HEREBY ORDERED that the R & R⁷ is ADOPTED as the order of the court.

IT IS FURTHER ORDERED that the court: (1) FINDS it has subject matter jurisdiction over Plaintiff's amended complaint; (2) AFFIRMS Defendants' decision to deny Plaintiff's adjustment Application because Defendants did not violate 5 U.S.C. § 706(2)(A); and (3) DENIES Plaintiff's request for injunctive relief. The clerk is directed to close this case.

Signed November 7, 2013.

BY THE COURT

District Judge David Nuffer

⁶ See 28 U.S.C. § 636(b)(1) (requiring de novo review of only "those portions of the report or specified proposed findings or recommendations to which objection is made") and Fed.R.Civ.P. 72(b)(3) (same). See also, Ocelot Oil Corp. v. Sparrow Industries, 847 F.2d 1458, 1464 (10th Cir.1988) (quoting United States v. United States Gypsum Co., 333 U.S. 364, 395, 68 S.Ct. 525, 92 L.Ed. 746 (1948)) ("The clearly erroneous standard . . . requires that the reviewing court affirm unless it 'on the entire evidence is left with the definite and firm conviction that a mistake has been committed."").

⁷ Docket no. 39.